

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

APPLICANT(S):	Magnuson, Thomas R.
APPLICATION NO.:	10/791,430
FILING DATE:	March 1, 2004
TITLE:	Illuminating Brake Release for a Motor Chain Saw
EXAMINER:	Ghassem Alie
GROUP ART UNIT:	3724
ATTORNEY DOCKET NO.:	30361/00001

FILED VIA EFS WEB

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir or Madam:

In furtherance of the Notice of Appeal filed September 18, 2008, Applicant submits this amended brief in support of the appeal in the above-identified case:

1. Real Party in Interest

The real party in interest in the instant appeal is Firestorm Wildland Fire Suppression, Inc..

2. Related Appeals and Interferences

Appellant, his legal representatives, and/or any assignees of the instant application are unaware of any appeals or interferences that will directly affect, or be directly affected by or have a bearing on the Board's decision in the instant appeal.

3. Status of Claims

Claims 41, 43-44 and 46-56 remain pending in the application. Each of these claims was submitted as part of the RCE filed in the case.

All of the claims were amended at some point during examination.

Claims 1 through 40, 42 and 45 have been canceled.

4. Status of Amendments

No amendments were made to any claims following final rejection.

5. Summary of the Claimed Subject Matter

All references made to the patent application in the descriptions for the following summary are taken from the figures, columns and paragraphs as filed with the RCE application.

The disclosed matter includes a motor chain saw characterized in that the chain brake release or triggering device holds a light source that is directed over the cutting region of the saw chain (FIG. 1). FIGS. 2 through 4 show the brake release of the invention 10, assembled in the mode for attachment to a motor chain saw (not shown).

In operation of the brake release, the brake release handle 10 is manually operable to a brake release position, or ready position, from a braking position, where in the latter position the extension is engaged and the braking mechanism has stopped the motion of the saw chain.

The brake release 10 described herein has a light source 11 located in the brake release operatively positioned for illuminating the saw chain while in operation, with the light source emanating from the front wall 12 to illuminate at least a portion of the saw chain while in operation. Preferably, the front wall 12 comprises a translucent material, with the light source 11 protected and secured behind the translucent material.

6. Grounds of Rejection to be Reviewed on Appeal

A. *Objection to the Claims under 35 USC § 132*

The amendments are objected to under 35 U.S.C. 132, as they allegedly introduced new matter into the disclosure.

B. 35 USC § 103(a) Rejection over Casas in view of Overy et al., and in further view of Richards et al.

Claims 41, 43-44, 46-51, and 54-55 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Casas (2002/0054491 AI) in view of Overy et al. (4,335,514), hereinafter Overy, and in further view of Richards et al. (2004/0050188), hereinafter Richards.

C. 35 USC § 103(a) Rejection over Casas in view of Overy and Richards, and further view of Kopras et al.

Claims 52 and 53 stand rejected over Casas in view of Overy and Richards, as applied to claim 49, and further view of Kopras et al. (6,443,675), hereinafter Kopras.

7. Argument

Appellant notes that, notwithstanding any grouping of the claims herein, the claims do not stand or fall together. No sole prior art reference has been cited as the basis for rejecting the subject invention. Instead, rejection is premised on a combination of the following prior art references that include: Tourangeau and Tiburzi.

A. Objection to the Claims under 35 USC § 132

The amendments are objected to under 35 U.S.C. 132, as they allegedly introduced new matter into the disclosure.

It is asserted that Figures 6 and 7, and the description added on paragraphs 18-20 in the specification are not supported by the original disclosure.

More particularly, it is suggested that in the amendment filed May 3, 2006, new matter not supported by the original disclosure, as the original disclosure fails to teach the exact location of the brake release handle on a chain saw.

Additionally, it is asserted that the original disclosure fails to teach a chain saw that looks like the chain saw in Figs. 6-7, and fails to teach that the brake release handle is simply connected to the exterior of the housing of the chain saw by a single screw, as shown in Figs. 6-7.

As Applicant argued during Examination, there is no requirement that the original disclosure detail each and every aspect of the invention, particularly things well known to the art, such as the location of such things as the brake release handle on a chain saw.

The engineering of a chain saw handle for a particular chain saw is well within the capabilities of one of ordinary skill in the art, and numerous examples are provided in the art for locating a handle on a motor chain saw (see Schurr, patent number 4,683,660).

There is also no requirement that any particular drawing be depicted to look exactly as the prior art, so long as the disclosure is enabling.

It is further asserted that the original disclosure does not teach that the light source illuminating the chain saw in the manner as shown in Fig. 6. Again, this represents a mere design choice for an illuminated chain saw handle, not an imperative.

B. 35 USC § 103(a) Rejection over Casas in view of Overy et al., and in further view of Richards et al.

Claims 41, 43-44, 46-51, and 54-55 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Casas (2002/0054491 A1) in view of Overy et al. (4,335,514), hereinafter Overy, and in further view of Richards et al. (2004/0050188), hereinafter Richards.

Casas only teaches a motor chain saw 4 having a handle or a handguard attached to the housing of the motor chain saw 4. Casas does not teach that the handguard or handle comprises the light source (6 in Fig. 3 and paragraph 19 in Casas), and it is not clear from the drawings in Casas that the light source 6 is secured to a handguard or handle or some other structure in the chainsaw. (Fig. 2).

To the extent that the light source 6 of Casas is viewed as being secured to a handguard, it is not clear that this would also be functioning as the brake release.

Overy is cited as teaching that a handguard, similar to the handguard shown in Casas, can form part of a braking mechanism. To the extent that it could be said that a combination of teachings suggests attaching a light as in Casas to the brake release of Overy, the combination does not teach or suggest Applicants' invention.

By the invention of Claim 1, Applicants provide a motor chain saw where the brake release with the light source secured within the brake release handle and adapted to emanate light from the front wall of an adapted brake release. This is not the mere attachment of an

externally affixed light of Casas to a brake release handle of Overy, as the light source of the present invention is integrally formed within a brake release handle.

Richards teaches a light source 30 for a tool that is described as a portable sensor.

Richards is non-analogous art, as it does not describe a tool undergoing similar use and stresses to a chainsaw. Richards does not teach a tool that emanates light from the front wall of a structure that is otherwise utilized as a brake release.

Richards is cited strictly for a cover 62 that comprises a translucent or transparent material such as plexiglass, glass, polycarbonate, or another type of translucent or transparent material.

Even given the teachings of Richards, it would not have been obvious to a person of ordinary skill in the art to create Applicants light source, as Applicants' light source constitutes more than the mere adaption of the light source in Casas' chain saw onto a brake release handle described by Overy. Casase may very well include a translucent cover, as taught by Richards, but there remains no teaching or suggestion to internalize such a light within a brake release handle.

Regarding claims 43-44 and 46, these claims depend from Claim 41 and are allowable for the reasons provided above for that claim.

The Examiner has taken Official Notice that the use of reversible cover for a light source is well known in the art. However, the Casas light source, even if combined with Richards, does not provide any teaching that the brake release handle itself be reengineered, as opposed to the approach adopted by Casas of attaching a light externally to a tool such as a chainsaw.

Regarding claims 47, 48, and 50, they all depend in some fashion from Claim 41, and are allowable for the reasons provided above for that claim.

Casas does not in any way teach or suggest that a plate be located within the brake release handle, or is attached to an interior surface of the rear wall. Richards does not provide a handle with a front and rear wall, but a sensor device with a light source 30 that pushes through a plate 56 internal to the sensor device.

Nothing in any of the disclosures teaches or suggests the securing of a light source inside a brake release handle of any sort of device, mechanism or tool. The choice of light source and securement means is important in a tool like a chain saw, particularly when reengineering, as

Applicants have, to locate the light source inside the brake release handle, and are that can receive significant jarring and vibrations.

Regarding Claims 54 and 55, they each depend in some fashion from Claim 41, and should be allowable for the reasons set forth above for Claim 41.

For all of the above reasons, the rejections of Claims 41, 43-44, 46-51, and 54-55 under 35 U.S.C. 103(a) over Casas, in view of Overy, and further in view of Richards should be withdrawn.

C. 35 USC § 103(a) Rejection over Casas in view of Overy and Richards, and further view of Kopras et al.

Claims 52 and 53 stand rejected over Casas in view of Overy and Richards, as applied to claim 49, and further view of Kopras et al. (6,443,675), hereinafter Kopras.

Regarding claims 52 and 53, Kopras is cited as teaching a hand-held cutting tool 20 including a light source 130 for illuminating the front area of the cutting tool, and that the light source includes two or more light emitting diodes.

Applicant notes that Claims 54 and 55 each depend in some fashion from Claim 41, and should be allowable for the reasons set forth above for Claim 41.

Further, there is no teaching in Kopras to suggesting embedding any light source inside a motor chain saw brake release handle, let alone two or more light emitting diodes.

For all of the above reasons, the rejections of Claims 52-53 under 35 U.S.C. 103(a) over Casas in view of Overy and Richards, as applied to claim 49, and further view of Kopras, should be withdrawn.

8. Claims Appendix

Attached is an appendix showing all of the claims on appeal.

9. Evidence Appendix

Not Applicable.

10. Related Proceedings Appendix

None.

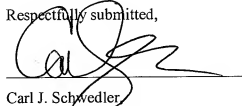
Conclusion

Therefore, in light of the above remarks, Appellant submits that the application is in condition for allowance. Accordingly, Appellant respectfully requests that the Examiner be directed to withdraw the rejection of outstanding claims and objections to outstanding claims and to pass this application to issue.

The Commissioner is hereby authorized to charge to Deposit Account No. 50-1577 any additional fees that should accompany the Petition for Extension of Time Under CFR 1.136(a), and the Appeal Brief Under 37 CFR 41.20(b)(2), as set forth in 37 CFR 1.17.

If the Board has any questions regarding this communication, the Board is invited to contact the undersigned at (916) 930-2585.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Carl J. Schwedler', is written over a horizontal line.

Carl J. Schwedler
Attorney for Appellant
Reg. No. 36,924

Dated: April 20, 2009

Bullivant Houser Bailey PC
1415 L Street, Suite 1000
Sacramento, CA 95814
Tel. : (916) 930-2585
Fax. : (916) 930-2501

11503435.1

Claims Appendix

Claims 1 through 40. (Canceled)

41. (Previously Amended) A motor chain saw having a braking mechanism operatively attached to a brake release wherein the brake release comprises a brake release handle having a front wall, a rear wall, and a light source, wherein the light source is secured within the brake release handle and is adapted to emanate from the front wall and wherein said front wall comprises translucent material.

Claim 42. (Canceled)

43. (Previously Amended) The motor chainsaw of Claim 41, wherein the front wall comprises a cover reversibly attached to the brake release handle.

44. (Previously Amended) The motor chainsaw of Claim 41, wherein the translucent material is plastic.

Claim 45. (Canceled)

46. (Previously Amended) The motor chainsaw of Claim 41, wherein the translucent material is glass.

47. (Previously Amended) The motor chainsaw of Claim 41, wherein the light source is affixed to a plate secured within the brake release handle.

48. (Previously Amended) The motor chainsaw of Claim 41, wherein the plate is attached to an interior surface of the rear wall.

49. (Previously Amended) The motor chainsaw of Claim 41, further comprising a power source for supplying electricity to the light source.

50. (Previously Amended) The motor chainsaw of Claim 49, wherein the power source is located within the brake release handle.

51. (Previously Amended) The motor chainsaw of Claim 49, wherein the power source comprises at least one battery.

52. (Previously Amended) The motor chainsaw of Claim 41, wherein the light source comprises a light emitting diode.

53. (Previously Amended) The motor chainsaw of Claim 52, wherein the light source comprises two or more light emitting diodes.

54. (Previously Amended) The motor chainsaw of Claim 41, wherein the brake release handle further comprises a switch for activating the light source.

55. (Previously Amended) The motor chainsaw of Claim 41, wherein the switch is located in the rear wall.

56. (Previously Presented) The motor chainsaw of Claim 41, wherein the translucent material is plexiglass.